

CHARLES SHANK
Claimant

VULCAN MFG., INC.
Respondent

OHIO CASUALTY INSURANCE COMPANY
Insurance Carrier

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The only issue raised by both claimant and respondent in this appeal is whether the Administrative Law Judge erred in denying claimant additional medical benefits under the Kansas Workers Compensation Act. K.S.A. 44-534a grants the parties the right to appeal from preliminary hearing orders when dealing with specific jurisdictional issues. These issues are as follows:

- a. Whether the employee suffered an accidental injury;
- b. Whether the injury arose out of and in the course of the employee's employment;
- c. Whether notice is given or claim timely made;
- d. Whether certain defenses apply.

K.S.A. 44-551(b) also allows review of a preliminary hearing order if it is alleged that the Administrative Law Judge exceeded his or her jurisdiction in granting or denying the relief requested.

The issue appealed is not one enumerated in K.S.A. 44-534a and further is well within the jurisdiction of the Administrative Law Judge under K.S.A. 44-534a.

However, a review of the briefs filed by the parties indicates the real issue being contested in this matter deals with whether claimant suffered accidental injury arising out of and in the course of his employment. Claimant sustained an injury on June 17, 1994 to his ribs. Claimant was treated by a Dr. Grant for a period of several weeks for the fractured ribs and was ultimately released to return to work on August 8, 1994. Claimant did not describe back symptoms until several months after the date of accident. During this period, claimant was involved in several episodes of physical activity, including painting, yard work and assisting an unidentified individual loading boxes into a pickup. The evidence does not support claimant's contention that he suffered a back injury on June 17, 1994. The Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence that he suffered actual injury arising out of and in the course of his employment to his back on the date alleged. As such, the decision by the Administrative Law Judge to deny medical treatment for preliminary hearing purposes is appropriate and the Appeals Board affirms the decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated March 8, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert German, Salina, Kansas
 John W. Mize, Salina, Kansas
 George R. Robertson, Administrative Law Judge
 George Gomez, Director